IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6686 of 1999
with
Special Civil Application
Nos.6687 to 6696 and
6698 to 6699 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement?-Yes. : YES

2. To be referred to the Reporter or not?-No. :

3. Whether Their Lordships wish to see the fair copy of the judgement?-No. : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No. : NO

5. Whether it is to be circulated to the Civil Judge?-No. :

MANJUBEN KISHORBHAI PATEL

Versus

CHIEF CONTROLLING REVENUE AUTHORITY

Appearance:
MR SANDEEP N BHATT for Petitioner in all matters.
MR HM BHAGAT for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 27/04/2000

ORAL JUDGEMENT

Rule. Mr.H.M. Bhagat appears and waives service of rule on behalf of the respondents. In the facts and circumstances of the case, the matters are taken up for

final hearing today.

All these petitions are filed against the order passed by the Chief Controlling Revenue Authority under Section 32B of the Bombay Stamp Act, 1958. It appears that notices were issued under Section 32A of the Act read with Rule 4(2) of the Bombay Stamp (Determination of Market Value of Property) Rules, 1984 (hereinafter referred to as "the Rules", calling upon the petitioners as to why the determination said to have been mentioned in the sale deeds should not be enhanced and asking the petitioners to pay additional amount of stamp duty. It appears that the petitioners did not appear before the authorities presumably because they were not staying at the addresses, which were mentioned in the sale deeds, but might have changed the residences and accordingly, orders were passed by the authority against the petitioners in their absence.

Being aggrieved by the orders passed by the authority, the petitioners approached the Chief Controlling Revenue Authority by invoking provisions of Section 32B of the Act, but all those appeals were dismissed on the ground of limitation as there was gross delay of about four years in filing of appeals.

It was submitted at the time of hearing of the petitions by the learned counsel for the petitioners that the petitioners were not aware about the order passed by the authorities and hence, there was delay. It was also submitted that this can be supported by the fact that even before the first authority, the petitioners did not remain present as they were not staying at the places where the notices were sent. A submission was, therefore, made that in the facts and circumstances, all the petitions may be allowed by directing the authorities to pass an appropriate order afresh in accordance with law.

Mr.Bhagat, on the other hand, supported the order passed by the Appellate Authority, contending that there was gross delay of about four years and no ground and / or reason much less sufficient ground has been made out and hence, the petitions may not be entertained.

In the facts and circumstances of the case, in my opinion, ends of justice would be met if the petitions are allowed by quashing and setting aside the orders passed by the Appellate Authority as well as by the original authority and by directing the original

authority to decide the matter again on merits afresh. From the facts and circumstances, it is clear that, prima facie, what the petitioners contend is correct as, ordinarily, if a notice is received by a party, he would appear before the original authority and contend that the stamp fees paid by him was sufficient and it was not contrary to the provisions of the Act or the Rules. The fact that the petitioners did not appear and the orders were passed ex parte goes to show that, presumably, they had changed their residence and that they had not received notices. If it is so, obviously, the said fact would also help them when they approach the appellate authority and that there was delay in filing appeals.

For the foregoing reasons, in my opinion, all the petitions deserve to be allowed and are accordingly allowed. The orders passed by the Appellate Authority as well as by the original authority are hereby set aside. The original authority will again pass appropriate orders after affording opportunity to the petitioners. It is, however, clarified that I have not entered into merits of the matters and as and when the matters would be heard by the original authority, it is open to him to pass appropriate orders in accordance with law. It is also open to the petitioners to produce any document and / or material in support of their contentions. Since I am setting aside the orders passed by both the authorities and directing the original authority to pass appropriate orders in accordance with law, it is directed that if an order will be passed against the petitioners, the Appellate Authority will entertain appeal, if any, by any of the petitioners only if the appellant will pay the entire amount without prejudice to his rights and contentions. If any amount is paid, obviously, it will be adjusted. Petitions are accordingly allowed to the above extent. Rule is made absolute accordingly. In the facts and circumstances, no order as to costs.

27th April, 2000 (C.K. Thakkar, J.)

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(apj)